

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0352
Sales Tax
For The Tax Years 2003-2005

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax –Exemption Certificates

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5-2(a); IC § 6-2.5-8-8(a); IC § 6-8.1-5-1(b).

The Taxpayer protests the imposition of tax on sales with exemption certificates.

II. Sales and Use Tax –Sales to Out-of-State Customers

Authority: IC § 6-2.5-5-15.

The Taxpayer protests the imposition of tax on sales to out-of-state customers.

III. Sales and Use Tax –Sales or Use Tax Paid to Another State

Authority: IC § 6-2.5-3-5.

The Taxpayer protests the imposition of sales tax on sales where customers paid sales or use tax to another state.

STATEMENT OF FACTS

The Taxpayer is a corporation that manufactures hopper bottom grain trailers. After an audit, the Indiana Department of Revenue ("Department") assessed additional sales tax, interest, and penalty for the tax years 2003, 2004, and 2005. The Taxpayer protested the assessment and provided some documentation in support of the protest. A hearing was scheduled for April 12, 2007. The Taxpayer failed to appear or contact the Department about the hearing. Therefore, this Letter of Findings is based on the documentation in the file.

I. Sales and Use Tax –Exemption Certificates

DISCUSSION

Tax assessments are presumed to be valid. IC § 6-8.1-5-1(b). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.*

Indiana imposes a sales tax on retail sales of tangible personal property in Indiana. The sellers of the property are required to collect the sales tax from the purchasers and remit that tax to the state unless the sale qualifies for a statutory exemption. IC § 6-2.5-2-1.

One of the statutory exemptions is an agricultural exemption found at IC § 6-2.5-5-2(a). This provision exempts the sales of machinery to be directly used in the direct production of “extraction, harvesting, or processing of agricultural commodities.”

IC § 6-2.5-8-8(a) provides for exemption certificates from sales tax as follows:

A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. *A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase. (emphasis added)*

The Taxpayer submitted exemption certificates for many of the sales on which the Department assessed sales tax. Each of these purchasers alleged that they qualified for the agricultural exemption. Since the purchasers provided valid exemption certificates, the Taxpayer has no obligation to prove that these sales were actually exempt pursuant to IC § 6-2.5-5-2(a). The Taxpayer has no duty to collect and remit sales tax or use tax on any purchase covered by a valid exemption certificate. IC § 6-2.5-8-8(a).

FINDING

The Taxpayer’s protest to assessments covered by valid exemption certificates is sustained.

II. Sales and Use Tax –Sales to Out-of-State Customers

DISCUSSION

The Taxpayer protested the imposition of sales tax on sales of trailers sold to out-of-state customers. Until June 30, 2004, there was an exemption from the sales tax for trailers sold to out-of-state purchasers found at IC § 6-2.5-5-15 as follows:

Transactions involving motor vehicles, trailers, watercraft, and aircraft are exempt from the state gross retail tax, if:

- (1) Upon receiving delivery of the motor vehicle, trailer, watercraft, or aircraft, the person immediately transports it to a destination outside Indiana;
- (2) The motor vehicle, trailer, watercraft, or aircraft is to be titled or registered for use in another state; and

- (3) The motor vehicle, trailer, watercraft, or aircraft is not to be titled or registered for use in Indiana.

IC § 6-2.5-5-15 was repealed.

Pursuant to this exemption, trailers that were immediately moved to another state, titled in that state, and not titled in Indiana qualified for exemption from the sales tax. The Taxpayer provided documentation indicating that several of the trailers on which sales tax was imposed met these requirements. The Taxpayer sustained its burden of proving that those trailers met the standards. The trailers that met the standards for exemption and were purchased on or before June 30, 2004 were not subject to the sales tax pursuant to IC § 6-2.5-5-15.

FINDING

The Taxpayer's protest is sustained for the trailers with documentation establishing that they met the standards for exemption as sold to an out-of-state purchaser and were purchased on or before June 30, 2004.

III. Sales and Use Tax –Sales or Use Tax Paid to Another State

DISCUSSION

The Taxpayer also protested the sales tax assessed on trailers on which the purchasers paid sales or use tax in another state. A credit for sales or use taxes paid to another state is found at IC § 6-2.5-3-5 as follows:

A person is entitled to a credit against the *use tax* imposed on the use, storage, or consumption of a particular item of tangible personal property equal to the amount, if any, of sales tax, purchase tax, or use tax paid to another state, territory, or possession of the United States for the acquisition of that property. (*emphasis added*)

The Department assessed sales tax – not use tax – against the Taxpayer. The credit found at IC § 6-2.5-3-5 can only be used to offset use tax. There is no corresponding credit against the sales tax for sales or use tax paid to another state. The Taxpayer is not entitled to credits against its sales tax liability for sales and use taxes paid to another state by purchasers of the trailers.

FINDING

The Taxpayer's protest is denied.